IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4780 of 1995
with
CIVIL APPLICATION NO. 10334 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RANCHHODBHAI RAVJIBHAI PATEL
Versus
STATE OF GUJARAT

Appearance:
MR PM BHATT for Petitioners
MS. HARSHA DEVANI, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA
Date of decision: /09/1999
C.A.V. JUDGEMENT

These two matters are proposed to be disposed of by a common order.

2. In Special Civil Application No. 4780 of 1995, Civil Application No. 10334 of 1999 has been moved by the petitioner seeking amendments in the main petition. The proposed amendments can be classified under two heads. One head of proposed amendment consists of the grounds on which the vires of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 (`the Act' for short), especially Section 3 of the Act has been challenged. The

second category of amendment is in the relief clause in which it is prayed that the first paragraph of Section 4 and Section 3(1)(a) of the Act is ultra vires of the Constitution of India, especially Articles 14 and 21 of the Constitution.

3. Counter affidavit has been filed by the respondent opposing the proposed amendment. The learned counsel for the parties were heard on this amendment application.

4. The learned counsel for the petitioners contended that the guiding principles or amendments even in writ petition under Article 226 of the Constitution of India will be the same as found under Order 6 Rule 17 of the Civil Procedure Code. Elaborating his arguments the learned counsel contended that the amendment can be allowed even at a late stage; that it can be allowed permitting the petitioners to add reliefs in the writ petition. It was further contended that subsequent events can also be taken into consideration and in the light of the subsequent events suitable amendments can be permitted to be made in the writ petition. There can be no dispute about the points raised by the learned counsel for the petitioner. However, while granting amendment it should also be considered whether the proposed amendment is actually necessary for effective disposal of the controversy involved in the writ petition or it is a mala fide action just with a view to keeping the old writ petition pending indefinitely on the pretext that the vires of Amending Act especially first paragraph of Sections 3(1)(a) an 4 has been challenged. The amendment in the relief clause can certainly be granted provided it does not change the nature of the writ petition. Initially in the writ petition only the order of the appellate authority was challenged. Now the vires of the amendment Act is proposed to be challenged.

5. In my opinion, neither the additional ground proposed to be taken in the writ petition are essential for effective disposal of the writ petition nor addition of grounds is required as prayed by the petitioner. On the other hand it appears that the purpose of moving this amendment application is to prolong the disposal of old writ petition of 1995. The proposed amendment cannot be allowed simply on the basis of the contention that in other petitions the other courts have allowed such amendment and referred the matter to Division Bench. However, no such order of any court was placed before me for consideration. Consequently, on mere oral submission

to that effect, such amendment cannot be granted. The matter in controversy can be effectively decided even without granting the proposed amendment. The subsequent events are no events necessary for disposal of the main writ petition. The Amending Act came into force in the year 1999 and it was adopted by the State of Gujarat on 30.3.1999. No provision of the Repealing Act has so far been declared ultra vires by any court of law nor by this court the Repealing Act has been declared to be ultra vires nor Sections 3 and 4 have been declared ultra vires. Consequently, the proposed amendments are refused and the Civil Application is rejected. Now it is proposed to finally dispose of the Special Civil Application No. 4780 of 1995.

6. The prayer in the writ petition is to quash the order dated 28.3.1989 annexure-A and the impugned judgement annexure-B dated 24.2.1995. By way of earlier amendment two more reliefs were sought that it may be declared that abatement clause in the Repealing Act is not applicable to the present case and that after the Repealing Act came into force, the petitioners have become entitled to the benefit of Section 3(2)(a) and (b) as the amount of compensation has already been refunded to the State Government.

7. The brief facts are that two petitioners along with their other two brothers and father and two others filled form No. 6(1) of the Urban Land (Ceiling & Regulation) Act, 1976, disclosing 22 properties and out of those properties some are built up properties and the others are agricultural lands. The Deputy Collector who is the competent authority and respondent No. 2 in this writ petition scrutinised the said form and declared 1033 sq. mtrs. of land as surplus from the holding of the petitioner Nos. 1 and 2 out of survey No. 63 only on 20.2.1989 vide annexure-A.

8. Aggrieved by this order of the competent authority dated 20.2.1989 the petitioners preferred appeal before the respondent No. 3 in the year 1993 being appeal No. 40 of 1993 which was dismissed on 24.2.1995 vide annexure-B. These orders have been challenged in this writ petition on the ground that no land is being held as surplus vacant land by the petitioners.

9. A counter affidavit was filed on behalf of the respondents in which it is deposed that by order dated 20.2.1989 the competent authority, the Deputy Collector, declared 1033 sq. mtrs. as surplus land from the

holding of the petitioners. This was done under Section 8(4) of the Urban Land (Ceiling and Regulation) Act. Thereafter, final statement under Section 9(1) of the Act was issued on 28.3.1989. Notification under Section 10(1) of the Act was issued by the competent authority on 11.5.1989 which was published in the Gujarat Government Gazette on 5.10.1989. The Notification under Section 10(3) of the Act was issued by the competent authority on 23.7.1992 which was published in the Government Gazette on 27.8.1992 vide annexure-II. On 6.10.1992 the landholders also got the demarcation plans sanctioned and thereafter notice under Section 10(5) of the Act was issued on 3.2.1993 and final possession of the excess vacant land was taken over on 16.3.1993 in the presence of witnesses. Copy of notice dated 3.2.1993 is annexure-III and the panchnama prepared at the time of taking over possession of the land is annexure-IV to the counter affidavit. Further stand of the respondent is that appeal was filed after a delay of almost four years under Section 33 of the Urban Land (Ceiling and Regulation) Act before the Urban Land Tribunal against the order dated 28.3.1989 passed by the competent authority. The said appeal was dismissed on 24.2.1995. Thereafter, the petitioners filed the present writ petition.

10. The counter affidavit was filed on 6.9.1999. On the basis of this counter affidavit and annexures to this counter affidavit the learned A.G.P. contended that since possession was already taken over on 16.3.1993 and the said action was supported by documents annexure-IV, the proceedings including this writ petition had abated in view of Section 3 of the Act. As against this, the learned counsel for the petitioner contended that physical possession was not taken and actually ex-parte possession was taken behind the back of the petitioners which is illegal and it does not amount to taking actual possession. It was also stated that the compensation received by the petitioners was returned to the respondents and as such the petitioners are entitled to restitution of the excess land and that the petition deserves to be considered on merits.

11. The petition can be considered on merits only when it is found that the writ petition has not been abated. The learned counsel for the petitioner contended that the petitioners' case is covered by Section 3(2)(a)(b) of the Repealing Act whereas the learned A.G.P. contended that the case is covered by Section 3(1)(a) of the Repealing Act. It is therefore necessary to

reproduce the aforesaid provisions.

"3(1) The repeal of the principal Act shall not affect -

(a) the vesting of any vacant land under sub-section (3) of Section 10, possession of which has been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority"

Thus, it is clear from this provision that the repeal of the principal Act shall not affect those cases where possession of the surplus land has been taken over by the State Government or any person duly authorised by the State Government and the land vested under Section 10(3) of the Act. If possession has actually been taken over by the State Government then all the proceedings including the writ petition shall stand abated. However, if possession has not been taken over then the provisions of Section 3(2)(a) (b) of the Act will come into operation.

12. Section 3(2)(a) of the Repealing Act provides that where (a) any land is deemed to have vested in the State Government under sub-Section (3) of Section 10 of the principal Act but possession of which has not been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority; (b)any amount has been paid by the State Government with respect such land then such land shall not be restored unless the amount paid if any has been refunded to the State Government. The learned counsel for the petitioner placed reliance upon Section 3(2)(a)(b) of the Repealing Act and contended that since the amount of compensation has been returned to the State Government, surplus land has to be restored. There is no factual controversy regarding refund of compensation by the petitioners to the State Government. Refund has been accepted by the State Government. The question is whether by refund of compensation amount, the petitioners are entitled to restitution of the surplus land.

13. Section 3(2)(a) of the Act will apply only when there has been notional vesting of land under Section 10(3) of the Act in State Government. When actual possession has not been taken over by the State Government then the provisions of Section 3(2)(a) will be attracted. Further under sub-section (b) of sub-section (2) of Section 3 of the Repealing Act, the amount of

compensation should have been paid by the State Government to the landholders. Unless these two conditions are satisfied, namely there was deemed vesting of land in the State Government but actual possession was not taken over by the State Government and compensation has been paid by the State Government to the land holders then such land can be restored provided the compensation has been refunded by the land holders to the State Government.

14. In the case before me the controversy is whether possession was actually taken over by the State Government or not. This is a disputed question of fact and finding on this disputed question of fact cannot be returned in exercise of jurisdiction under Article 226 of the Constitution of India. No detailed enquiry by permitting the parties to adduce evidence on this controversy is deemed proper and desirable. Whatever material has been furnished by the respondents on the record of the writ petition gives prima facie evidence that possession was actually taken over on 16.3.1993 and it was not a fictitious transaction vide annexure-IV to the counter affidavit consisting of panchnama and also demarcation plan numbering 5. It is therefore difficult to accept the contention that actual possession has not been taken over by the State Government. Even from the stand of the petitioner it appears that actual possession was taken over by the State Government. If possession was not actually taken over by the State Government, there was no necessity for making prayer that the possession should be restored to the petitioners because they have refunded the compensation paid to them. Thus, even from the stand of the petitioners it is clear that actual possession was taken over by the State Government. If this is so, then Section 3(1)(a) of the Repealing Act applies and all the proceedings including this writ petition abates. If this is the legal position then merits of the writ petition need not be investigated.

In the result, it is held that in view of Section 3(1)(a) of the Repealing Act all proceedings including this writ petition abated. The writ petition is accordingly disposed of as abated with no order as to costs.

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